

### **REMARKS**

This response is intended as a full and complete response to the non-final Office Action mailed September 19, 2008. In the Office Action, the Examiner notes that claims 1, 3-7, 10-13 and 15-17 are pending and rejected.

In view of both the amendments presented above and the following discussion, Applicant submits that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Thus, Applicant believes that all of the claims are now in allowable form.

### **35 U.S.C. §103 Rejection of Claims 1, 3-7, 10-13 and 15-17**

Claims 1, 3-7, 10-13 and 15-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Strubbe (5,223,924, hereinafter "Strubbe '924") (incorporating by reference Strubbe et al. (5,047,867) in view of Goldstein (5,410,326, hereinafter "Goldstein"). The rejection is traversed.

The Office Action fails to establish a *prima facie* case of obviousness, because the combination of Strubbe '924 and Goldstein fails to teach or suggest all the claim elements. Applicant's claim 1 recites:

1. A set top terminal for generating an interactive electronic program guide for display on a television connected to the set top terminal, the terminal comprising:
  - means for retrieving information via a program control information signal of a program selected from a plurality of programs and watched by a subscriber;
  - means for storing said information;
  - means for identifying frequently-watched programs most often watched by said subscriber based upon said stored information and tracking a number of times said subscriber watches a program;
  - means for receiving a television signal;
  - means for extracting individual programs from the television signal;
  - means for generating an electronic program guide for controlling display of content on a television screen, the guide comprising:
    - a favorites menu including names of programs available for selection, wherein the programs included in the favorites menu are based on the identified frequently-watched programs;
  - means for receiving selection signals from a user input of a program that will be broadcast at a future time selected from said favorites menu;
  - means for notifying said subscriber that a change of channel is imminent

based upon nearing said future time of said program that will be broadcast at said future time; and  
means for changing said channel to said program at said future time.

The Applicant respectfully submits that the combination of Strubbe '924 and Goldstein fails to teach or suggest at least "means for identifying frequently-watched programs most often watched by said subscriber based upon said stored information and tracking a number of times said subscriber watches a program," as recited in claim 1. As previously argued, Strubbe '924 discloses a user interface which can access downloaded TV program information and automatically correlate this information with the preferences of the user. The correlation is created by receiving input from a user as to whether the user "likes" or "dislikes" the program. (See Strubbe '924, col. 4, ll. 59-64). Alternatively, the system may automatically register a "like" response if a user records or watches a program for longer than a given amount of time. (See *Id.* col. 5, ll. 23-32).

As previously noted, the Applicant respectfully submits that the method taught by Strubbe '924 is not the same as the method taught by Applicant's invention. To illustrate, Applicant's invention teaches means for identifying frequently-watched programs most often watched by said subscriber based upon said stored information and tracking a number of times said subscriber watches a program. In other words, Applicant's invention monitors the number of times (i.e. frequently watched) a program is watched. As a result, more accurate trends may be detected over a period of time.

In contrast, Strubbe '924 teaches that a "like" indication may be recorded when a viewer watches a program a single time for longer than a given amount of time. (See Strubbe '924, col. 5, ll. 23-32). Notably, this method may provide numerous false positives and be less accurate than Applicant's invention. For example, a viewer watching a program for 15 minutes may never return to that program again, however, in Strubbe '924 the program will be identified as being "liked" by the viewer. Unlike Strubbe '924, the same program in Applicant's invention would probably not be identified as being "favorite" of the viewer because it was only watched once. In other words it would not be classified as a "frequently-watched program". Identifying "favorites" based on stored information over a period of time, as taught by Applicant's

invention, provides a more accurate analysis of “favorites” than that taught by Strubbe ‘924.

Goldstein fails to bridge the substantial gap between Strubbe ‘924 and Applicant’s invention as recited in at least independent claim 1. Goldstein only teaches tracking of channels. (See Goldstein, col. 26, ll. 15-62). In stark contrast, the Applicant’s invention specifically claims tracking a number of times said subscriber watches a program. Thus, even if Strubbe ‘924 and Goldstein were permissibly combined, the combination would only teach a method that identifies a “liked” program based upon a user input and the ability to track the frequency of a channel watched by the user.

Notably, the difference in the ability to passively track a number of times said subscriber watches a program and tracking the number of times a channel is watched is not trivial. Tracking a number of times a subscriber watches a program involves different technology than that involved with tracking the number of times a channel is watched. Thus, the two are not interchangeable.

As a result, the Applicant’s claims specifically recite tracking a number of times said subscriber watches a program and is not so broad as to encompass the method of tracking channels, as taught by Goldstein. As such, independent claim 1 is patentable under 35 U.S.C. 103(a) over Strubbe ‘924 in view of Goldstein. Independent claims 7 and 16 recite relevant limitations similar to those recited in independent claim 1. Accordingly, for at least the same reasons discussed above, independent claims 7 and 16 also are patentable under 35 U.S.C. 103(a) over Strubbe ‘924 in view of Goldstein.

Furthermore, claims 3-6, 10-13, 15 and 17 depend, directly or indirectly from independent claims 1, 7 and 16, while adding additional elements. Therefore, these dependent claims also are patentable under 35 U.S.C. 103(a) over Strubbe ‘924 in view of Goldstein for at least the same reasons discussed above in regards to independent claims 1, 7 and 16. Therefore, Applicant respectfully requests that the Examiner’s rejection be withdrawn.

**CONCLUSION**

Thus, Applicant submits that all of the claims presently in the application are in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim, at (732) 530-9404, so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: \_\_\_\_\_

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EJ Wall

Eamon J. Wall  
Registration No. 39,414  
Attorney for Applicant(s)

PATTERSON & SHERIDAN, LLP  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702  
Telephone: 732-530-9404  
Facsimile: 732-530-9808